

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Avril L. Wilson,) C/A: 3:18-1535-MGL-TER
Plaintiff,)
vs.)
University of South Carolina,)
Harris Pastides,)
Venis Manigo,)
Defendants.)
)
)

This is an action filed by a *pro se* litigant. Plaintiff paid the filing fee. (ECF No. 1). On July 18, 2018, service of process was authorized by the court. (ECF No. 19). Plaintiff was instructed: “Because Plaintiff paid the full filing fee, Plaintiff is responsible for service of process under Rule 4.” Also, “Plaintiff has 90 days from the date on which the summonses are issued to serve Defendants in compliance with Rule 4. Under Rule 4(m), unless a Defendant is served within 90 days after the summonses are issued as directed by this Order, that particular unserved Defendant may be dismissed without prejudice from this case.” (ECF No. 19). On January 16, 2019, Plaintiff was ordered to provide the court status of her case, including, but not limited to, filing proof of service if applicable. Plaintiff was informed that time to execute service upon defendants under FRCP Rule 4 ran on October 16, 2018. (ECF No. 24). The mail in which the Order was sent to Plaintiff’s provided address has not been returned to the court, thus it is presumed that Plaintiff received the Order, but has neglected to comply with it within the time permitted under the Order. The Court has not received any response from Plaintiff and the time for his compliance has passed.

Plaintiff’s lack of response to the Order indicates an intent to not prosecute this case, and subjects this case to dismissal. *See Fed. R. Civ. P. 41(b)*(district courts may dismiss an action if a Plaintiff fails to comply with an order of the court); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v.*

Lopez, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

Moreover, Rule 4(m) of the Federal Rules of Civil Procedure provides that unless a particular defendant is served within 90 days after the complaint is filed, this Court may dismiss an action without prejudice as to that particular defendant. Case law interpreting Rule 4(m) or its predecessor has uniformly held that dismissal is mandatory unless good cause is shown if a Defendant is not served within the days provided by the rule. Service of the Complaint was due by October 16, 2018, and has not been completed. Plaintiff, although proceeding *pro se*, is not proceeding *in forma pauperis*, and thus is responsible for service of the Complaint.

Accordingly, this case is dismissed without prejudice. The Clerk of Court shall close the file.

IT IS SO ORDERED.

February 5, 2019
Columbia, South Carolina

s/Mary Geiger Lewis
The Honorable Mary Geiger Lewis
United States District Judge